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REMARKS

Claims 1, 9 and 19 are canceled, claims 2-8, 10-13, 16, 22, 23, 25 and 26 are amended and claims 27-29 are added. Claims 2-8, 10-18 and 20-29 will be pending following entry of the amendment, with claims 14, 15, 17, 18, 20, 21 and 24 remaining withdrawn from consideration at this time.

The following remarks are responsive to the Office action dated March 3, 2004.

Rejection of claims under 35 U.S.C. §112, first paragraph

Reconsideration of the rejection of all of the claims of the application as failing to comply with the enablement requirement of §112 is respectfully requested.

While original independent claims 1, 9 and 19 have been canceled, new claims 27-29 are believed to recite relatively similar subject matter. Specifically, new claims 27-29 are directed to a garment or absorbent article having a mechanical fastening comprised of a loop fastening component and a hook fastening component that refastenably engages the loop fastening component. The loop fastening component is a multi-directional stretchable loop fastening component comprised of a nonwoven loop material secured to an elastic substrate. The loop fastening component is extensible in first and second perpendicular directions (in the plane of the loop fastening component) and is elastomeric in at least one of the directions (or both directions as recited in claim 29). The loop fastening component and hook fastening components recited in the claims provide recited shear strength values in accordance with the shear strength test set forth in the specification.

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The essence of each of claims 27-29 is that the multi-directional stretch capabilities of the loop fastening component allow extension (and/or elastomeric stretching) of the component while it is refastenably engaged by the hook fastening component. This configuration provides a mechanical fastening system that performs as well as systems that use non-stretchable components, or single direction stretch components, without the need for providing high shear strength values.

The Office action takes the position that the specification describes a lengthy list of various well known hook and loop fasteners and a wide variety of well know materials and means for constructing such fasteners, and that unless all of the listed combinations achieve the claimed result, applicants have not specified which combinations in fact achieve the claimed result. The Office further takes the position, citing *United States v. Telectronics, Inc.*, 878 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988), that to replicate the recited results would require one skilled in the art to conduct undue experimentation. Applicants respectfully disagree with these positions.

At page 26, lines 17-20, the specification of the present application discloses that the multi-directional stretchable loop fastener component can be formed by various methods, and specifically discloses as one embodiment that the loop fastener component is formed by bonding together a stretched elastomeric substrate and a nonwoven web. The nonwoven web may be ungathered, gathered in one direction or gathered in multiple directions prior to being bonded to the stretched elastomeric substrate. Page 26, lines 23-24. The nonwoven web can be

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gathered by creping, necking, or by using retractive materials.
Page 26, line 30 - page 27, line 1.

With respect to one particular embodiment in which the necking method is used to gather the nonwoven web, a neckable nonwoven web is elongated in the machine direction while allowing it to neck in the cross-machine direction. The necked nonwoven web is then laminated to an elastomeric substrate while the substrate is stretched in the machine direction. Page 27, lines 16-29. At page 28, line 10 through page 29, line 15, the specification then details the types of nonwoven webbing that are suitable for necking in accordance with the present invention. In a more specific example, the neckable material that comprises the nonwoven web is disclosed in the very next paragraph (page 29, lines 16-27) as being a multilayer material constructed of a first layer of spunbonded polypropylene having a basis weight from about 0.2 to 8 osy, a layer of meltblown polypropylene having a basis weight of from about 0.2 to 4 osy, and a second layer of spunbonded polypropylene having a basis weight from about 0.2 to 8 osy. An alternative is also specifically disclosed in which the nonwoven web may be a single layer of spunbonded fibers having a basis weight of from about 0.2 to about 10 osy, or meltblown fibers having a basis weight of from about 0.2 to about 8 osy.

Applicants submit that this information is sufficient for one skilled in the art to make and use the multi-directional stretchable loop fastening component recited in new claims 27-29. While other suitable materials and methods of making the loop fastening component are disclosed in the specification and are submitted to also provide the shear strength results recited in the claims, the specification need only disclose one

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method for making and using the claimed invention to satisfy the enablement requirement. See, e.g., MPEP §2164.01(b), citing *In re Fisher*, 427 F.2d 833, 839, 166 USPQ 18, 24 (CCPA 1970). This is particularly applicable for mechanical subject matter, such as in the present application. See *Spectra-Physics, Inc. v. Coherent, Inc.*, 827 F.2d 1524, 1533, 3 USPQ2d 1737, 1743 (Fed. Cir. 1987).

Applicants' specification as set forth above clearly discloses at least one embodiment for making the multi-directional stretchable loop fastening component recited in claims 27-29 as providing (along the hook fastening component) the recited shear strength values.

It is also submitted that no undue experimentation is necessary for one skilled in the art to make the recited multi-directional stretchable loop fastening component from the various other known nonwoven webs and manufacturing methods disclosed in the application. To the extent that any testing is necessary, the test described in the specification at page 38, line 27 through page 39, line 10 is a relatively simple, routine test. See, e.g., *In re Wands*, 858 F.2d 731, 737, 8 USPQ2d 1400, 1404 (Fed. Cir. 1988) (noting that even a considerable amount of experimentation is permissible if it is merely routine).

Applicants further note that in *United States v. Telectronics, Inc.*, 878 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988), relied upon in the Office action, the court held that the disclosure of only one embodiment and disclosure of the method of testing (which was substantially more costly and time consuming than the shear strength test of the present application) was sufficiently enabling. The same is at least

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true of the present application, with both the above embodiment of the multi-directional stretchable loop fastening component being disclosed along with the test to determine shear strength values.

For these reasons, applicants submit that all of the pending claims satisfy the requirements of 35 U.S.C. §112.

Rejection of claims under 35 U.S.C. §102(e)

Claim 27

New claim 27 is directed to a garment for personal wear, comprising:

a) a body having first and second end regions;
b) a mechanical fastening system disposed on the body, the mechanical fastening system comprising:

i) a multi-directional stretchable loop fastening component disposed in the first end region of the body, said loop fastening component comprising a nonwoven loop material secured to an elastomeric substrate, the loop fastening component being extensible during use in first and second substantially perpendicular directions generally within the plane of said loop fastening component and being elastomeric during use in at least one of said first and second directions, and

ii) a hook fastening component disposed in the second end region of the garment body and comprising a hook material adapted to refastenably engage the multi-directional stretchable loop fastening component;

iii) wherein the loop fastening component and the hook fastening component provide shear strength values of less than 3900 grams in each of said first and second directions.

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Claim 27 is submitted to be unanticipated by and patentable over the references of record, and in particular U.S. Published Application No. 2002/0173767 A1 (Popp et al.), in that whether considered alone or in combination the references fail to show or suggest all of the features recited in new claim 27, and in particular a multi-direction stretchable loop fastening component comprising a nonwoven loop material secured to an elastomeric substrate whereby the fastening component is extensible in first and second perpendicular directions and elastomeric in at least one of the first and second directions, and wherein the loop fastening component and a corresponding hook fastening component together provide shear strength values of less than 3900 grams in each of the first and second directions.

Popp et al. disclose a method and apparatus for making prefastened and refastenable pants with a desired waist and hip fit. At least one of the components of the pants is constructed of a retractive material that, either prior to or after engagement of hook (82, 83) and loop (84, 85) fastening components, is activated to retract the retractive material. At paragraphs [99] and [100], Popp et al. particularly disclose that the side panels (34, 134) of the pants may be formed of the retractive material and may comprise an elastic material capable of stretching in a direction generally parallel to the transverse axis (49) of the pants. Various known methods for making such an elastic material are also set forth in paragraph [99]. Popp et al. further disclose at paragraph [107] that the side panels (34, 134) may serve as one of the fastening components.

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However, Popp et al. fail to disclose or even suggest a multi-directional stretchable loop fastening component as recited in new claim 27. Rather, the materials disclosed by Popp et al. are single direction stretch materials. Popp et al. only disclose at paragraph [99] that the side panels may comprise an elastic material capable of stretching in a direction generally parallel to the transverse axis, not first and second perpendicular directions. Moreover, the composites described in paragraph [99] of Popp et al. (as disclosed in that paragraph as well as in the references cited therein) are single direction stretchable composites, not multi-direction stretchable composites as recited in new claim 27.

For these reasons, new claim 27 is submitted to unanticipated by and patentable over Popp et al. and the other references of record.

Claims 2-8 have been amended to depend directly or indirectly from new claim 27 and are submitted to be patentable over the references of record for the same reasons as claim 27.

Claim 28

New claim 28 is directed to a disposable absorbent article for personal wear, comprising:

- a) a body having first and second end regions and comprising a liquid permeable inner layer, an outer layer in opposed relation with the inner layer, and an absorbent layer disposed between the inner layer and the outer layer;
- b) a mechanical fastening system disposed on the body, the mechanical fastening system comprising:
 - i) a multi-directional stretchable loop fastening component disposed in the first end region of the body, said

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loop fastening component comprising a nonwoven loop material secured to an elastomeric substrate, said loop fastening component being extensible during use in first and second substantially perpendicular directions generally within the plane of said loop fastening component and being elastomeric during use in at least one of said first and second directions, and

ii) a hook fastening component disposed in the second end region of the body and comprising a hook material adapted to refastenably engage the multi-directional stretchable loop fastening component;

iii) wherein the multi-directional stretchable loop fastening component and the hook fastening component provide shear strength values of about 1500 to about 3900 grams in each of the first and second directions

New claim 28 is submitted to be unanticipated by and patentable over Popp et al. and the other references of record for substantially the same reasons as claim 27. That is, Popp et al. fail to disclose or suggest a multi-directional stretchable loop fastening component comprised of a nonwoven loop material secured to an elastomeric substrate wherein the fastening component is stretchable in first and second perpendicular directions in the plane of the loop component.

Claims 10-13 and 16 have been amended to depend directly or indirectly from new claim 28 and are submitted to be patentable over the references of record for the same reasons as claim 28.

Claim 29

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New claim 29 also includes the recitation of a multi-directional stretchable loop fastening component comprised of a nonwoven loop material secured to an elastomeric substrate wherein the fastening component is stretchable in first and second perpendicular directions in the plane of the loop component. New claim 29 further recites that the loop fastening component is elastomeric in the first and second directions during use.

New claim 29 is submitted to unanticipated by and patentable over Popp et al. and the other references of record for substantially the same reasons as claim 27. Moreover, there is no disclosure or suggestion in Popp et al. for configuring a loop fastening component to be elastomeric in the first and second perpendicular directions.


Claims 22, 23, 25 and 26 have been amended to depend directly or indirectly from new claim 29 and are submitted to be patentable over the references of record for the same reasons as claim 29.

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CONCLUSION

In view of the foregoing, applicants respectfully request favorable consideration and allowance of claims 2-8, 10-18 and 20-29 as now presented.

Respectfully submitted,



Richard L. Bridge, Reg. No. 40,529
SENNIGER, POWERS, LEAVITT & ROEDEL
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

RLB/tmg

VIA FACSIMILE 703-872-9306